

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT

2017

CLE/gen/01506

Common Law & Equity Division

BETWEEN

(1) KAYLA WARD

~~JEAN MINUS~~

~~MARVA HEASTIE~~

(2) HOPE MILLER

(3) DWAYNEL ARCHER

~~BARBARA ADDERLEY~~

~~ANTONIQUE BROWN~~

~~DONALD NOUGEUZ~~

~~JENNIFER RUSSELL~~

~~GENESE MUSGROVE~~

~~MERESHA WALKES~~

~~PATRICIA JOHNSON~~

~~LAKERA CASH~~

~~JACQUELINE DUNCOMBE~~

~~LATAJ HENFIELD~~

~~NICKIA MCPHEE~~

~~WARREN NEYMOUR~~

~~TENELLE MACKEY~~

~~CAROLEE MUNNINGS~~

~~INGA BROWN~~

~~CHANTIQUE BROWN~~

~~TANZANIA CAREY~~

~~LISA PRATT~~

~~KIRMICA STUART~~

~~SHERRY ROBERTS~~

~~JULIA THOMPSON~~

~~JOHN MCDONALD~~

~~DODDRGIDGE MISSICK~~

~~MITCHELL FERGUSON~~

~~HERBERT DUNCOMBE~~

~~CLAUDETTE CAPRON~~

~~MAZELL HINZEY~~

(4) LATOYA KNOWLES

~~ALPHONSO ALBURY~~

~~MARY TAYLOR~~

(5) GEORGETTE JOHNSON

Claimants

AND

THE GAMING BOARD FOR THE BAHAMAS

Defendant

JUDGEMENT ON ASSESSMENT OF DAMAGES

1. The issues at hand relevant to the assessment of damages relate to the Supreme Court's ruling by Justice Charles (as she then was) on 17<sup>th</sup> February 2020. According to Justice Charles, the Claimant's employment with the Defendant was wrongfully and unfairly terminated by purported redundancy resulting in loss and damage. As a result, the Claimant's claim relates to a finding of wrongful dismissal.
2. Please note that as can be seen from the heading, the matter at hand has been settled in relation to all names struck out above. The Assessment at hand concerns Ms. Kayla Ward, Ms. Georgette Johnson, Ms. Latoya Knowles, Mr. Dwaynell Archer, and Ms. Hope Miller. Sad to say, Claudette Capron is deceased.
3. Counsel for the Claimants argue that the following issues have to be considered, i.e.:
  - a. What is reasonable notice for each Common Law Claimant?
  - b. What benefits are the Claimants entitled to for wrongful dismissal? and
  - c. What further compensation the Claimants are entitled to for Unfair Dismissal and Statutory benefits?

### **What the Claimants are entitled to for Wrongful Dismissal?**

4. The Claimants argue that Charles J. (as she then was) defined wrongful dismissal in para 82-85 of her ruling, and note that under Common Law, there is no specific amount of pay the Claimants are entitled to. In addition, at para 96, Charles J. made a finding of wrongful dismissal for the Claimants. The argument is that the same is based upon the reasonable notice which requires all pecuniary benefits to be included for the period of notice. The Claimants were paid damages under s. 29 which is statute law and it is argued that they are thus owed notice pay and all pecuniary benefits. Hence, it is argued that the Claimants were paid the statutory amount for wrongful dismissal and not the common law amount for wrongful dismissal, which includes the notice period. It is the Court's view that the difference is owed to the Claimants, and hence the issue of wrongful dismissal in Common Law must be considered and analyzed.

## **What further compensation are the Claimants entitled to for Unfair Dismissal**

5. A finding for Unfair Dismissal was made by Charles J. at para 178. Counsel for the Claimants references para 193 of the Charles J. ruling which entitles each Claimant to basic and compensatory damages up to a maximum of 2 years. We will now consider the case made out by each Claimant regarding the issue of assessment of damages.

### **Kayla Ward**

6. Ms. Kayla Ward gave a witness statement in this matter dated 26<sup>th</sup> May 2023. In the same she gave evidence that she commenced employment with the Ministry of Tourism in 1990. She noted that she was seconded to the Office of the Prime Minister in August of 2012, and commenced secondment to the Gaming Board in November 2014. She also gave evidence to the fact that she was made Permanent and Pensionable in June of 2015. Ms. Ward also gave evidence that at the time, she had 25 years of diverse technology experience prior to joining the Gaming Board. Her employment by the Gaming Board was as an Assistant Secretary in Information Technology and Facilities Management Division included Information Technology, Facilities Management, Statistics, Security Administration and Custodial Services.

7. On September 15<sup>th</sup> 2017 she had a slip and fall in the lobby of the Gaming Board, resulting in pain to her lower back, ankle and knee. She was subsequently terminated on 30<sup>th</sup> November 2017, and the Supreme Court subsequently ruled that she was unfairly and wrongfully dismissed as a result of redundancy on 17<sup>th</sup> February 2020.

8. Please note that regarding the above, Kayla Ward's witness statement was tendered into evidence, with the contents sworn to be true to the best of her knowledge, information, and belief. She was only queried on vacation, and medical bills arising from the aforementioned Industrial Accident. Please also note that none of the salary figures, or benefits were denied or rejected during cross-examination by the Defendant, inclusive of allowances, casual leave, medical premiums, bonus and pension payments. Please see below what Ms. Kayla Ward is seeking in damages, i.e.:

- a. Basic and Compensatory damages  
as a manager of 24 months; \$156,000.00

b. Damages re salary for period of reasonable notice;	\$177,000.00
c. Allowance for Notice Period at \$10,395.00 per year;	\$20,790.00
d. Insurance payments re group health-insurance premium of \$429.99 per month;	\$10,319.76
e. Casual Leave of 10 days per year;	\$6,846.10
f. Five weeks-vacation per year;	\$17,115.35
g. Premium payments per period of Notice;	\$27,000.00
h. Premium payments after becoming Permanent;	\$40,500.00
i. One-time bonus for 2017;	\$2000.00
j. Medical costs consisting of Deductible, Medicines and travel;	\$48,050.35
k. 6 weeks pay for not communicating with Minister pursuant to s. 26(3) Employment Act, 2017; and	\$9,000.00
l. 26 weeks payment pursuant to s. 44(2) Employment Act.	\$39,000.00

Total: \$553,621.56-\$22,208.33  
= **\$531,413.23**

### **Latoya Knowles**

9. Ms. Latoya Knowles gave evidence that she commenced employment with the Gaming Board on 1<sup>st</sup> March 1999. She was employed as an Assistant Manager

in the Management Department, and she gave evidence that she was called to the office on February 16<sup>th</sup> 2016, where she was summarily terminated. At the time she was 43 years of age and had served 19 years with the Gaming Board. The Supreme Court subsequently ruled she was unfairly and wrongfully dismissed as a result of redundancy on 17<sup>th</sup> February, 2020.

10. Please note that regarding the above, Latoya Knowles's witness statement was tendered into evidence, with the contents sworn to be true to the best of her knowledge, information, and belief. Please also note that none of the salary figures, or benefits were denied or rejected during cross examination by the Defendant, inclusive of allowances, casual leave, medical premiums, bonus and pension payments. Please see below the damages sought by Ms. Latoya Knowles, i.e.:

a. Basic and Compensatory damages as a manager of 24 months;	\$96,139.68
b. Damages re salary for period of reasonable notice;	\$97,739.96
c. Allowance for Notice Period at \$5,695.00 per year;	\$11,389.92
d. Insurance payments re group health-insurance premium of \$429.99 per month;	\$10,319.76
e. Casual Leave of 10 days per year;	\$5,684.90
f. Five weeks-vacation per year;	\$14,252.45
g. Pension Contributions;	\$15,140.88
h. One-time bonus for 2017;	\$1200.00
i. 6 weeks pay for not communicating with Minister pursuant to s. 26(3) Employment Act, 2017; and	\$5,546.52
j. 26 weeks payment pursuant to s. 44(2) Employment Act.	\$24,034.92

Total Claim less payment of \$46,041.66  
= **\$235,407.33**

**DWAYNEL ARCHER**

11. Mr. Dwaynel Archer gave evidence that he commenced employment with the Gaming Board of The Bahamas in or about October 2011. He notes that he was employed with the Gaming Board as an Assistant Manager in the Facilities Department. He was an electronic engineer with a BSC from Devry University in October 2004. He had obtained certificates in COMPTIA -network, and was a CISCO certified network associate (CCNA) and COMPTIA security, which was the computer system used by the Gaming Board. He also had qualifications in Professional Business Management, Bahamas Professional Leadership, and was a Project Management Professional.

12. In December of 2017 he was called to the Gaming Board Office and was summarily terminated. At the time he was 37 years of age and had served six (6) years with the Gaming Board. The Supreme Court subsequently ruled that he was unfairly and wrongfully dismissed as a result of redundancy on 17<sup>th</sup> February 2020.

13. Please note that regarding the above, Dwaynel Archer's witness statement was tendered into evidence, with the contents sworn to be true to the best of his knowledge, information, and belief. Please also note that none of the salary figures, or benefits were denied or rejected during cross examination by the Defendant, inclusive of allowances, casual leave, medical premiums, bonus and pension payments. Please see below the damages sought by Mr. Dwaynel Archer, i.e.:

- |   |             |
|---|-------------|
| a. Basic and Compensatory damages<br>as a manager of 24 months; | \$85,000.24 |
| b. Damages re salary for period of<br>reasonable notice;        | \$48,070.00 |
| c. Allowance for Notice Period<br>at \$5,695.00 per year;       | \$5,695.00  |
| d. Insurance payments re group<br>Health-insurance premium of   |             |

	\$429.99 per month;	\$5,519.88
e.	Casual Leave of 10 days per year;	\$1,848.80
f.	Five weeks-vacation per year;	\$4,662.10
g.	Pension Contributions;	\$7,210.44
h.	Pension gratuity due to unfair dismissal;	\$19,708.00
i.	One-time bonus for 2017;	\$1200.00
j.	6 weeks pay for not communicating with Minister pursuant to s. 26(3) Employment Act, 2017; and	\$4,903.86
k.	26 weeks payment pursuant to s. 44(2) Employment Act.	\$21,250.06

Total Claim less payment of \$21,545.61  
= **\$183,163.18**

### **HOPE MILLER**

14. Ms. Hope Miller gave evidence that she commenced employment with the Gaming Board of The Bahamas on 24<sup>th</sup> November 2000 as an Administrative Assistant Supervisor in the Management Department. On 30<sup>th</sup> November 2017, she was called to the office where she was summarily terminated. At the time she was 50 years of age and had served 17 years with the Gaming Board. The Supreme Court subsequently ruled that she was unfairly and wrongfully dismissed as a result of redundancy on 17<sup>th</sup> February 2020.

15. Please note that regarding the above, Hope Miller's witness statement was tendered into evidence, with the contents sworn to be true to the best of her knowledge, information, and belief. Please also note that none of the salary figures, or benefits were denied or rejected during cross examination by the Defendant, inclusive of allowances, casual leave, medical premiums, bonus and pension payments. Please see below the damages sought by Ms. Hope Miller, i.e.:

a.	Basic and Compensatory damages as a manager of 24 months;	\$79,788.40
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b. Damages re salary for period of reasonable notice;	\$80,146.63
c. Insurance payments re group health-insurance premium of \$429.99 per month;	\$10,319.76
d. Five weeks-vacation per year;	\$7,719.20
e. Pension Contributions;	\$12,162.00
f. 6 weeks pay for not communicating with Minister pursuant to s. 26(3) Employment Act, 2017; and	\$4,493.10
g. 26 weeks payment pursuant to s. 44(2) Employment Act.	\$19,470.10

Total Claim less payment of \$38,350.00  
= **\$175,749.09**

**GEORGETTE JOHNSON**

16. Ms. Gerogette Johnson gave evidence that she commenced employment with the Gaming Board in about September 1985. She was employed as an Assistant Secretary in the Administrative Services Division, which includes Human Resources, Professional Development & Training and Salary Administration and Logistics. She gave evidence that on return from 3 week's-vacation, she was called to the office and was summarily terminated. At the time she was 56 years of age and had served 32 years with the Gaming Board. The Supreme Court subsequently ruled she was unfairly and wrongfully dismissed as a result of redundancy on 17<sup>th</sup> February, 2020.

17. Please note that regarding the above, Georgette Johnson's witness statement was tendered into evidence, with the contents sworn to be true to the best of her knowledge, information, and belief. Please also note that none of the salary figures, or benefits were denied or rejected during cross examination by the Defendant, inclusive of allowances, casual leave, medical premiums, bonus and pension payments. Please see below the damages sought by Ms. Georgette Johnson, i.e. :



a. Basic and Compensatory damages as a manager of 24 months;	\$176,999.68
b. Damages re salary for period of reasonable notice;	\$248,591.65
c. Allowance for Notice Period at \$10,395.00 per year;	\$25,987.50
d. Insurance payments re group health-insurance premium of \$429.99 per month;	\$12,899.70
e. Casual Leave of 10 days per year;	\$11,521.00
f. Five weeks-vacation per year;	\$28,802.80
g. Pension Contributions;	\$37,500.00
h. One-time bonus for 2017;	\$2000.00
i. 6 week's pay for not communicating with Minister pursuant to s. 26(3) Employment Act, 2017; and	\$10,211.52
j. 26 weeks payment pursuant to s. 44(2) Employment Act.	\$44,249.92

Total Claim less payment of \$95,875.00  
= **\$502,888.77**

### **Defendant's Case**

18. The case for the Defendants is based on six (6) points of argument. The first of which is whether the Plaintiffs were summarily dismissed without reasonable notice. The Defendants argue that the Plaintiffs all conceded that they were provided with written notice of termination and were further provided with payment

in lieu of notice. The Defendants make reference to sections 31 and 29(1)(b)(c) of the Employment Act. In response to the same the Court will make reference to the law relevant to the issue of termination of employment with notice. In the final analysis, it will be seen that regarding the issue at hand, the factual circumstance of each Claimant has to be looked at and assessed accordingly.

### **Termination of Employment and Notice**

19. At Common Law an employer is entitled to dismiss an employee for any reason he chooses, whether such reason is justified or not. Whether an employer chooses to so dismiss an employee he must also choose to face the consequences of such dismissal. Provided an employer who so chooses to dismiss an employee gives reasonable and adequate notice to that employee, the employer may take such action. If the notice given is not reasonable and adequate, then subject to certain exceptions, the employer may be sued for damages for wrongful dismissal.

20. Under certain circumstances an employer may dismiss an employee and terminate the contract of employment even without giving the employer any notice. If the contract of employment is for a fixed term, then unless the contract provides for an early termination by notice, notice is irrelevant. The contract must be allowed to run for the period fixed and at the end of which it automatically terminates and no action for such termination will lie against the employer.

21. In the absence of events frustrating the contract or serious misconduct on the part of the employee, and employer is not entitled to terminate such a fixed term contract. Reference can be made to the case of **McClelland v. Northern Ireland General Health Services Board** [1975] 1 W.L.R. 594, *Lord Goddard*, notes, i.e.:

**“That an advertisement offers permanent employment does not in my opinion, mean thereby that employment for life is offered. It is an offer, I think, of general, as distinct from merely temporary employment, that is that the person employed would be on the general staff with an exception that, apart from misconduct, or inability to perform the duties of his office, the employment would continue for an indefinite period. But apart from a special condition, in my opinion, a general employment is always liable to be determined by reasonable notice...”**

22. The position is generally as follows that under common law an employer is entitled to dismiss an employee, terminating his employment for any reason or for no reason at all, the only issues involved are whether or not the employee is entitled to a certain period of notice or whether the employee's conduct was such as to warrant summary dismissal in which case the employee is not entitled to notice at all before dismissal.

23. When an employer decides to terminate the contract of employment then if the ground for termination is not misconduct, the employer is obliged to give **reasonable notice** to the employee before the contract is terminated. Where the contract of employment sets down a particular period of notice then under those circumstances the length of notice prescribed by the contract will be the appropriate length of notice to be given. In all other cases it is a question of fact as to what length of notice is reasonable in any given circumstance. Where reasonable notice is not given by the employer he will be required to pay salary or wages in lieu of such notice.

24. The length of notice will vary according to what is reasonable in the circumstances and in deciding what is reasonable such predictable factors such as length of service, seniority, mode of payment, position and responsibility will be considered. The notice factor is affected by the availability of jobs within a particular locality and therefore what may constitute "reasonable notice" in America or in England or even in Canada may not be so in The Bahamas.

25. The common law principles in The Bahamas with regard to the giving of notice for termination is the same as in England, the length of notice in each case may differ from that which may be given in England or other countries with common law background under similar circumstances. The reason for this will be the factors to be considered when the issue of what constitutes a reasonable notice arises. The chances of alternative employment as a factor to be considered may cause the length of notice to be given to vary from country to country.

26. Reference can be made to the case of **Collins v. St. John's Publishing Company Ltd. (1980) 27 New Foundland & Prince Edwards Island Reports (Nfld & P.E.I.R.) 45** where *Goodridge J.* expounded on what constitutes reasonable notice said:-

**"The law is quite clear on this point. In the absence of a written contract an employee whose employment is terminated without cause is entitled to reasonable notice.**

**The reasonableness of the notice will be determined by several factors.**

**Some of these were enumerated in the case of Smith v. Tamblyn (1979), 23 A.R. 53: 9 Alta. L.R. (2d) 274, where at page 280 *Laycraft J.* noted the following items, i.e.:**

- a. Age;**
- b. Length of service of the employee;**
- c. Responsibilities of the employee;**
- d. Experience;**
- e. Status;**
- f. Training;**
- g. Qualifications of the employee; and**
- h. Other factors.**

27. In Royal Bank of Canada v. Ingrid Cambridge, Appeal No. 4 of 1984, Bahamas Court of Appeal (unreported) the Court of Appeal discussed the issue of what constitutes reasonable notice. Joseph A. Luckhoo President, expressed an opinion similar to that of *Goodridge J.* in Collins v. St. John's Publishing, i.e.:

**“In the final analysis, what is a reasonable period of notice is a question to be decided having regard to all of the circumstances of individual cases. It should be noticed that the tendency in the more modern authorities is to set somewhat greater periods for reasonable notice than in older authorities.**

(please see **Labour Law In The Bahamas** by *Emmanuel Enebeli Osadebay, JA*, pages 118-122)

28. In the final analysis, it can be seen that the predominant evidence of all the Claimants is that they were called to the Gaming Board Office and were each given letters of termination. It is because of a lack of reasonable notice that Charles J. found a case for wrongful dismissal and hence the Claimants are entitled to notice pay and all pecuniary benefits associated with the same. As a result, the Court is of the view that the Claimants are entitled to the common law amount for wrongful dismissal, factoring in the notice period. As a result, each Claimant will be analyzed accordingly, and the necessary adjustment made according to their individual factual circumstance.

29. The next argument put forward by the Defendants is the issue whether the Claimant's wrongful dismissal damages claim has been satisfied? The defendant submits that the Claimant's claim for wrongful dismissal has not been satisfied and should not form part of the Assessment of Damages. It is argued that the Claimants attempt to have an assessment of damages for wrongful dismissal by and through their witness statements is invalid and legally prohibited.

30. The Defendants argue that the Claimant's Amended Statement of Claim makes no reference to an allegation of incorrect termination payments. The argument is that the Claimants accepted their severance packages and should now be constrained from claiming wrongful dismissal damages consisting of salary for the period of reasonable notice or any other allowances. Thus the Defendants argue that the Claimants should be constrained from seeking to have assessed any further damages for wrongful dismissal outside that of which was specifically pleaded.

31. In addition, the Defendants argue that the following payments have been made to the Claimants to date, i.e.

<u>Name</u>	<u>Payment at Disengagement</u>	<u>Special Damages</u>	<u>Total Remitted Payments</u>
Georgette Johnson	\$101,894.23	\$8,617.27	\$110,511.50
Kayla Ward	\$20,893.73	\$12,675.00	\$33,568.73
Latoya Knowles	\$55,680.73	\$13,380.32	\$69,061.05
Dwaynel Archer	\$35,457.59	\$1026.93	\$36,484.52
Hope Miller	\$40,381.51	\$4148.18	\$47,774.69

32. The Court notes the fact that the Claimants in their witness statements reference and deduct the payments made when considering their total claim for damages, however the figures are different from those referenced above, i.e.:

<u>Name</u>	<u>Payment Made</u>
Georgette Johnson	\$95,875.00
Latoya Knowles	\$46,041.66
Hope Miller	\$38,350.00
Kayla Ward	\$22,208.33
Dwaynel Archer	\$21,545.16

However, in making reference to the transcript from the assessment, it can be seen that the figures referenced in paragraph 31 above, are correct.

33. The Defendants argue that the Claimants are bound by their pleadings, and make reference to the case of **Scotiabank v. Machusla Pinder Scciv App No. 73 of 2021** which notes, i.e.:-

**“It is a basic principle of Civil Litigation that parties are bound by their pleadings. It is fundamental to our adversarial system of justice that the parties should clearly identify the issues that arise in the litigation, so that each has the opportunity of responding to the points made by the other...”**

34. Reference was also made to the case of **Bahamas Power & Light Company v. Ervin Dean** Scciv App No. 115 of 2021 at para 39 page 16 where *Isaacs JA* notes, i.e.:-

**“the respondent elected to do battle in the Supreme Court as opposed to the Industrial Tribunal; and as such, he is required to play by the rules of the Supreme Court...” A plaintiff must plead his case to enable his opponent to properly meet the case he faces.”**

35. As a result of the above, the Defendants argue that the Claimants are constrained from seeking an assessment of wrongful dismissal damages consisting of salary for the period of reasonable notice or any other allowances or entitlements for the said period such as group health insurance payments, casual leave, pension contributions, and vacation entitlements. However, the Court notes that an appeal regarding the same ought to have been made. The issue at hand concerns an assessment based on the ruling of Charles J. on 17<sup>th</sup> February 2020, where she ruled that the employment of the Claimants with the Defendant was wrongfully and unfairly terminated by purported redundancy resulting in the Claimants suffering loss and damage. The issue regarding the particularizing of pleadings ought to have been appealed, and hence regarding the issue of assessment of damages, the ruling of Charles J. (as she then was) on 17<sup>th</sup> February 2020, still stands and must be abided by (see para 206 of Charles J. as she then was, ruling given on 17<sup>th</sup> February 2020).

36. The next argument made by the Defendants is that the Claimants are not entitled to an additional twenty six (26) week's pay due to non-reinstatement. In making reference to s. 44(2)(b) of the Employment Act, it is seen that the same notes, i.e.:-

**“if an order under s. 43 is made, but the complainant is not reinstated, or as the case may be, re-engaged...unless the employer satisfies the Tribunal that it was not practicable to comply with the order, the Tribunal shall make an additional award of compensation to be paid of no more than twenty six weeks pay.”**

37. The Court makes reference to the Amended Statement of Claim filed 16<sup>th</sup> May 2018, in particular para 18, where it is seen that the Claimants seek an order for reinstatement, or Damages in the alternative. Charles J. (as she then was), in para 21 of her ruling notes, that considering the above, the Claimants made provision for alternative remedies if the Court did not order reinstatement. As a result, her view was that the Claimant’s interpretation of para 206 was flawed. Considering the same, the Court in this assessment is of the view that the Claimants are not entitled to an additional twenty six (26) week’s pay due to non-reinstatement as Charles J. (as she then was), elaborated on the same and noted that the Claimant’s interpretation of the same was flawed.

38. The next issue for consideration that is argued by Defendants is whether the Plaintiffs have satisfied the evidentiary burden of illustrating the loss which flowed to the Plaintiffs from the dismissal? The Defendants contend that the primary issue for determination by this Court is the measure of damages pursuant to a compensatory award which flows from an unfair dismissal based on evidence as presented by the Claimants. Reference is made to section 47(1) (2) of the Employment Act which notes that the compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant. The Defendants argue that the Claimants have not demonstrated through documentary evidence that they have incurred reasonable expenses in consequence of the dismissal.

39. The Court agrees with the argument of the Defendants that there is no absolute right to benefits by way of pension or gratuity. Reference is made to s. 4(4) of the Pension’s Act, and the fact that the same notes that for the Claimants to have qualified for a Pension, the Claimants must be members of the Pensionable establishment and have a minimum of five (5) years continuous service before reaching the mandatory age of retirement. Claimants who do not qualify for a pension, and provided they complete ten (10) years of continuous monthly service, will be eligible for gratuity equivalent to 4 % of their annual salary at the time of retirement, multiplied by the number of completed years of service. As a result, the Court is of the view that the Claimants Kayla Ward (2 years employ and 50 years

old), and Dwaynel Archer (6 years employ and 37 years old), cannot claim the loss of such benefits due to dismissal.

40. As a result, please note that according to the Defendants, two of the Claimants received a gratuity, i.e. Latoya Knowles and Hope Miller. Georgette Johnson is in receipt of pension and gratuity, i.e.:-

<u>Name</u>	<u>Pension</u>	<u>Gratuity</u>
Georgette Johnson	\$35,584.37	\$118,614.57
LaToya Knowles		\$30,600.00
Hope Miller		\$26,479.20

Please note, no evidence to the contrary has been raised by the Claimants, and as such the figures allocated to the Claimants above, must be adjusted accordingly.

41. The next issue for consideration that the Defendants are arguing is whether the Plaintiffs have taken reasonable efforts to mitigate their loss. The Defendants argue that the Claimants ought to have mitigated their loss and seek alternative employment. Reference was made to the case of **Beckham v. Drake (1849) 2 HLC 579, 607-608, i.e.:-**

**“employment in any ordinary branch of industry can be obtained by a person competent for the place, and that the usual rate of wages can be proved...it is the duty of the servant to use diligence to find another employment...”**

42. Reference is also made to s. 48(3) of the Employment Act, and the fact that any conduct of the Claimants after the dismissal was such that it would be just and equitable to reduce the amount of the award to any extent, the Tribunal shall reduce the amounts accordingly. The Defendant argues that the Claimants have not illustrated by and through their witness statements that they have taken reasonable steps to mitigate their loss. However, as will be seen, each Claimant will be analyzed accordingly regarding this issue and as noted above, their age, education, and individual circumstances regarding seeking employment within the Bahamian context will be considered. It must be noted that the aforementioned authority used is of British Origin, from 1849, and predominantly relates to whether the plea of bankruptcy is a good bar...and whether the right of action on which the Plaintiff has declared did or did not pass to his assignees. Please also note that reference was also made by Counsel for the Defendant to the unreported case of **Owen Thompson v. Constable Foster and the Attorney General of Jamaica [2006] CLT 095 of 1999**, and in particular a quote from *Sykes J.* at para 17. Sad to say, the same was



of little assistance to the Court, as no copy of the same was provided in the Defendant's Closing Submissions Bundle.

43. The Defendant's last point of law argued seeks to ascertain the statutory measure of damages for an unfair dismissal based on procedural irregularity? The Defendants argue that the statutory measure of damages for unfair dismissal is based on a procedural irregularity can be garnered from two key aspects, i.e.:-

1. Determining the statutory maximum that may possibly be remitted to the Claimants; and
2. Determining the appropriate compensation for a procedural irregularity.

The Defendants make use of the formula for a basic award and that which is just and equitable as it relates to a compensatory award. As a result, they rely on s. 48(2) of the Employment Act and argue that there can be a reduction in the basic and compensatory award.

44. Reference is also made to section 46(5) of the Employment Act, and there is argument that the basic award shall be reduced or as the case may be, further reduced...on the ground that the dismissal was by reason of redundancy, whether in pursuance of Part VI or otherwise. Reference was also made to s. 47(5) of the Employment Act, to further reduce the amount of the compensatory award. As a result, the Defendants argue that the statutory reductions ought to be applied to the calculation of the basic and compensatory award as per Sections 46(5) and 47(5) of the Employment Act.

45. The Defendants also argue that their payments to the Claimants of \$297,400.49 has exceeded the calculation of the basic award of \$267,175.44, by Thirty Thousand, Two Hundred and Twenty Five Dollars, and Five Cents \$30,225.05. Reference was also made to the case of **Eastwood v. Magnox Electric Plc** [2004]UKHL 35, paras 12 and 13, i.e.:-

**“It is not for the courts to extend further a common law implied term when this would depart significantly from the balance set by the legislature... A common law action for breach of an implied term not to be dismissed unfairly would be inconsistent with the purpose of Parliament sought to achieve by imposing limits on the amount of compensatory awards...”**

The Defendants argue that The Bahamas Parliament has expressed its view on how the interests of employers and employees and the social and economic interests of the country as a whole, are best balanced in cases of unfair dismissal.

46. Considering the above, the Court makes reference to the case of **Leon Cooper v. Grand Bahama Power Company Ltd.** SCCivApp. No. 178 of 2017. The Court in this case addressed the rights and benefits an employee is entitled to when there is a claim of unfair and wrongful dismissal and damages have to be assessed. This case is instructive on understanding and awarding pecuniary benefits. The Honourable Sir Hartman Longley, P at paras 23 and 24 note the following, i.e.:-

**23. “What the Act does not do however, is to limit or restrict “(a) any greater rights or better benefits of any employee under any law, contract of employment, arrangement or custom; (b) the right of any employee or trade union to negotiate on behalf of any such employee, any greater rights or better benefits; or (c) an employer from conferring upon an employee rights or benefits, that are more favourable to an employee than the rights or benefits conferred by this Act.”**

**24. “Therefore, if greater or better benefits may be found in the individual contract of employment than those conferred by the Employment Act then those rights and benefits prevail over the Right and benefits conferred by the Employment Act.”**

47. Justice Longley made it irrefutably clear that in order for the rights and benefits conferred by the individual contract of employment to oust the benefits conferred by the Employment Act then those rights and benefits must be “more favourable to an employee than the rights or benefits conferred by the Act.” In the assessment at hand, the benefits owing to the five Claimants in their Witness Statements were not refuted or challenged by the Defendant. From the facts at hand it can be seen that the benefit and rights conferred upon the Claimants from their contracts of employment clearly ‘trump’ those granted via statute and as a result oust the same. In addition, regarding the issue concerning the specific content of pleadings, it is important to note that the task at hand concerns an assessment. The substantive trial was heard before Charles J., (as she then was), and she came to a legal conclusion of wrongful and unfair dismissal for the Claimants. The argument re specifics as to pleadings ought to have been raised via an appeal.

48. The Court will now seek to ‘filter’ the aforementioned amounts argued to be owed to the Claimants, by their Counsel, through the six (6) points argued by Counsel for the Defendant, and come to a final figure for each Claimant. Please note that the same will not consider the issue of Special Damages as the same was agreed prior to and remitted to the Claimants in a total sum of **\$39,847.70** on 1<sup>st</sup> September 2020.

49. **Kayla Ward**

Please see below the list of damages Counsel for the Claimants argue is due and owing to Ms. Kayla Ward, i.e.:-

a. Basic and Compensatory damages as a manager of 24 months;	\$156,000.00
b. Damages re salary for period of reasonable notice;	\$177,000.00
c. Allowance for Notice Period at \$10,395.00 per year;	\$20,790.00
d. Insurance payments re group health insurance premium of \$429.99 per month;	\$10,319.76
e. Casual Leave of 10 days per year;	\$6,846.10
f. Five weeks-vacation per year;	\$17,115.35
g. Premium payments per period of Notice;	\$27,000.00
h. Premium payments after becoming Permanent;	\$40,500.00
i. One-time bonus for 2017;	\$2000.00
j. Medical costs consisting of Deductible, Medicines and travel;	\$48,050.35
k. 6 weeks pay for not communicating	

with Minister pursuant to s. 26(3)  
Employment Act, 2017; and \$9,000.00

1. 26 weeks payment pursuant to s. 44(2)  
Employment Act. \$39,000.00

Total: \$553,621.56-\$22,208.33  
= **\$531,413.23**

50. From the evidence adduced thus far it can be seen that Kayla Ward was summarily dismissed without reasonable notice. From the facts it can be seen that she was only employed with the Defendant for a period of two (2) years, and she held a Manager's classification during this time period.

51. In assessing damages owed to Kayla Ward, there are three (3) concerns, i.e. the issues of mitigation and whether she is entitled to the 26 week's pay considering Charles J.'s legal position on the same, i.e. that the Claimant's view on the 26 week's pay is flawed, considering their amended pleadings. The third concern is that of item (j) above, i.e. Medical Costs consisting of Deductible, Medicines and Travel, which can be seen as Special Damages, which have to be specifically pleaded and evidence adduced in order to receive the same.

52. Regarding the issue of mitigation, it can be seen that Ms. Kayla Ward is employed at the National Insurance Board from 2019 to current. As a result, there is about a two year period from when she was made redundant, to the time of being employed with the National Insurance Board. Also, of significance is her age at the time of disengagement, i.e. fifty (50) years old, the same is relevant regarding the issue of mitigation. In the Bahamian context, even with her twenty five (25) years of diverse experience, at her age in 2017, it would have been challenging to obtain alternative employment. No evidence from salary slips etc., was produced in evidence in this matter, and as such her damages have to be reduced accordingly, by \$5,000.00. As a result, considering the concerns raised above, i.e.:-

	<u><b>\$ Reduction</b></u>
a. Mitigation	2000.00
b. 26 Week's Pay	39,000.00
c. Medical Costs consisting of deductible, medicines and travel	48,050.35

Total: \$89050.35

Therefore \$531,413.23 - \$89,050.35 = **\$442,362.88**, i.e. the same this Honourable Court will allow her re assessment of damages.

### **Dwaynel Archer**

53. Mr. Dwaynel Archer was employed in a Managerial capacity with the Defendant, and was made redundant after a six (6) year period of employment. The Court will now seek to 'filter' the damages owed to him for wrongful and unfair dismissal after consideration of the six (6) issues raised by the Defendant. In considering the issue of mitigation, it is seen from the record of the assessment that Mr. Archer noted that he is self-employed at the time he gave evidence in the assessment. However, he did note that after he was 'fired' from the service of the Defendant, he decided to stay at home and assisted with the care of his children.

54. Please note below the schedule of damages being sought by Mr. Dwaynel Archer, i.e.:-

a. Basic and Compensatory damages as a manager of 24 months;	\$85,000.24
b. Damages re salary for period of reasonable notice;	\$48,070.00
c. Allowance for Notice Period at \$5,695.00 per year;	\$5,695.00
d. Insurance payments re group health insurance premium of \$429.99 per month;	\$5,519.88
e. Casual Leave of 10 days per year;	\$1,848.80
f. Five weeks-vacation per year;	\$4,662.10
g. Pension Contributions;	\$7,210.44
h. Pension gratuity due to unfair dismissal;	\$19,708.00
i. One-time bonus for 2017;	\$1200.00

- |    |  |             |
|----|--|-------------|
| j. | 6 weeks pay for not communicating with Minister pursuant to s. 26(3) Employment Act, 2017; and | \$4,903.86  |
| k. | 26 weeks payment pursuant to s. 44(2) Employment Act.  | \$21,250.06 |

Total Claim less payment of \$37,457.59  
= **\$167,610.79**

There are two (2) concerns regarding the aforementioned amounts, i.e. items (k), and that of mitigation. In considering item (k), para 22 of the Defendant's submissions is noted and accepted as correct and must be deducted accordingly. Regarding the issue of mitigation, Mr. Archer notes at the time he gave evidence in this matter, he was employed from June of 2023, and prior to, was at home assisting with his children for a period of about six (6) years. The Court also notes that when questioned by Counsel for the Defendant, no documents were exhibited regarding efforts of the Claimant Mr. Dwaynel Archer in his efforts to seek gainful employment after being released from the employ of the Defendant. The Court in this circumstance would normally reduce the damages to the Claimant by \$15,000.00, but considering the fact that he sought to assist at home with his children, will only seek to reduce the same by \$10,000.00.

55. Towards this end, damages to the Claimant Dwaynel Archer are to be reduced by \$21,250.06 + \$10,000.00 = \$31,250.06. As a result, the figure of \$167,610.79 ought to be reduced by \$31,250.06, thus leaving a figure of **\$136,360.73**; i.e. the sum this Honourable Court will allow him re assessment of damages.

### **Georgette Johnson**

56. Georgette Johnson is a Claimant, who at the time was eligible to receive a pension as well as a gratuity. The Defendants note that on 15<sup>th</sup> November 2018, she received a pension of \$35,584.37 and a gratuity of \$118,614.57. As a result, it can be seen that she had accepted her retirement and exercised her discretion to receive a pension. Considering the fact that she is retired, the Court questions the relevancy of the argument regarding the issue of mitigation. However, considering the

argument from Counsel for the Defendant concerning the 26 week's pay issue, the same ought to be deducted accordingly. As a result, please note the following, i.e.:-

a. Basic and Compensatory damages as a manager of 24 months;	\$176,999.68
b. Damages re salary for period of reasonable notice;	\$248,591.65
c. Allowance for Notice Period at \$10,395.00 per year;	\$25,987.50
d. Insurance payments re group health insurance premium of \$429.99 per month;	\$12,899.70
e. Casual Leave of 10 days per year;	\$11,521.00
f. Five weeks-vacation per year;	\$28,802.80
g. Pension Contributions;	\$37,500.00
h. One-time bonus for 2017;	\$2000.00
i. 6 weeks pay for not communicating with Minister pursuant to s. 26(3) Employment Act, 2017; and	\$10,211.52
j. 26 weeks payment pursuant to s. 44(2) Employment Act.	\$44,249.92

Total Claim less payment of \$101,894.23  
= \$496,869.54

57. As a result, after deducting item (j) above from the sum of \$496,869.54, we get the figure of **\$452,619.62**, i.e. the sum this Honourable Court will allow her regarding assessment of damages.

## **Latoya Knowles**

58. As seen from the submissions of the Defendants, Ms. Latoya Knowles is one of the Claimants who indicated their desire to receive a gratuity, and the same was received on 6<sup>th</sup> March 2019 in the amount of some \$30,600.00. In addition, in her sworn testimony she gave evidence that she was paid the sum of \$55,680.73.

59. Regarding the issue of mitigation, Ms. Latoya Knowles did indicate in giving her evidence that she has not sought alternative employment, and was not employed at the time of giving evidence in this Supreme Court Assessment of Damages. At the time of disengagement she was forty three (43) years of age, and at the time of the hearing she was forty-nine (49) years of age. As seen above, the following damages are being sought by Ms. Latoya Knowles, i.e.:-

a. Basic and Compensatory damages as a manager of 24 months;	\$96,139.68
b. Damages re salary for period of reasonable notice;	\$97,739.96
c. Allowance for Notice Period at \$5,695.00 per year;	\$11,389.92
d. Insurance payments re group health insurance premium of \$429.99 per month;	\$10,319.76
e. Casual Leave of 10 days per year;	\$5,684.90
f. Five weeks-vacation per year;	\$14,252.45
g. Pension Contributions;	\$15,140.88
h. One-time bonus for 2017;	\$1200.00
i. 6 weeks pay for not communicating with Minister pursuant to s. 26(3) Employment Act, 2017; and	\$5,546.52
j. 26 weeks payment pursuant to s. 44(2)	



Employment Act.

\$24,034.92

Total Claim less payment of \$55,680.73

= **\$225,768.26**

60. Considering the aforementioned, the issues regarding mitigation as well as item (j) in the aforementioned listing have to be considered and deducted accordingly by \$8,000.00. As a result, the figure of \$8,000 +\$24,034.92=\$32,034.92 is deducted from the aforementioned amount of \$225,768.26, to arrive at a final figure of **\$193,733.34**, i.e. the sum this Honourable Court will allow her regarding this Assessment of Damages.

### **Hope Miller**

61. Ms. Hope Miller is the bargaining unit claimant in this matter. Her total payment at the time of disengagement, less Special Damages is some \$40,381.51 and she also received a 10% lump sum of \$3246.00, for a total of \$43,627.51. Please also note that she is also one of the Claimants who indicated her desire to and received a gratuity of \$26,479.20 on 3<sup>rd</sup> April 2019.

62. Regarding the issue of mitigation, it is seen in evidence that she worked at Robinson Morris AME Church in 2020 up to 2023, but was not able to produce any pay slips for the same. According to Ms. Hope Miller, she was paid by check which was deposited in the bank, and was not able to produce a pay slip for working at the said Church. She also noted that she got a job at Breezes in 2023 for five (5) months. Ms. Hope Miller noted that she was working and noted she was unable to produce any evidence relative to her pay from the aforementioned places of employment. In this circumstance, Court finds that even in the absence of salary slips etc., Ms. Hope Miller, out of all the Claimants in this matter, showed a genuine effort in terms of mitigating her circumstance, and hence the Court will not deduct the same from her damages being sought in this matter.

63. In addition, as seen in paras 61 and 62 of the Defendant's Closing Submissions, Ms. Hope Miller, as the Bargaining Unit Claimant, pursuant to Article 25(1)(c) of the Industrial Agreement, is entitled to forty days basic pay for a procedural irregularity, which amounts to **\$5,990.80**. It is seen from the evidence adduced thus far that Ms. Hope Miller is claiming the following, i.e.:-

a. Basic and Compensatory damages  
as a manager of 24 months;

\$79,788.40

b. Damages re salary for period of reasonable notice;	\$80,146.63
c. Insurance payments re group health insurance premium of \$429.99 per month;	\$10,319.76
d. Five weeks-vacation per year;	\$7,719.20
e. Pension Contributions;	\$12,162.00
f. 6 weeks pay for not communicating with Minister pursuant to s. 26(3) Employment Act, 2017;	\$4,493.10
g. 26 weeks payment pursuant to s. 44(2) Employment Act; and	\$19,470.10
<b>h. Amount due to Article 25(1)(c) of Industrial Agreement.</b>	<b>\$5,990.80</b>

Total Claim less payment of \$40,381.51  
= \$220,089.99

The aforementioned, after deduction leaves a final total figure of **\$179,708.48**, i.e. the sum this Honourable Court will allow her Assessment of Damages.

### **Interest**

64. The law relating to the payment of interest on judgment debts is the Civil Procedure (Award of Interest) Act, 1992. Section 2 of the Civil Procedure (Award of Interest) Act provides that:

**“2. (1)Every judgment debt shall carry interest at such rate as shall be prescribed by rules of court made by the Rules Committee constituted by section 75 of the Supreme Court Act levied under a writ of execution on such judgment:**

**Provided that nothing in this section shall apply in relation to any Judgment debt upon which interest is payable as of right, whether by virtue of an agreement of otherwise.**

65. The rate of interest payable on judgment debts is provided for under Rule 2 of the Civil Procedure (Rate of Interest) Rules, 2008, which provides that:

- a. **“For the purpose of section 2(1) of the Civil Procedure (Award of Interest) Act, the rate of interest is the prime rate of the Central Bank plus two per per centum per annum.”**

66. The current prime rate of the Central Bank as published on its website at <https://centralbankbahamas.com> is 4.25% per annum. As a general rule, interest runs from the time the judgment is pronounced-the incipitur rule as was recently affirmed by the Privy Council in **Rajesh Ramsarran v. The Attorney General of Trinidad and Tobago** Privy Council Appeal No. 18 of 2004.

67. Accordingly, interest payable on the damages as taxed is 4.25% per annum plus two per centum per annum which totals 6.25% per annum from the date of the Order being given by Justice Fraser, until payment in full.

68. Interest is accruing on outstanding damages in accordance with the provision of the Civil Procedure (Award of Interest) Rules at the rate of 6.25% per annum since the date of the judgment of Charles J. (as she then was). Also, in considering interest from the date of the Claimants being made redundant, to the date of judgment of Charles J. (as she then was), please see the following table below, i.e.:-

Name	Assessed Damages	Redundancy Date	Date of Charles J. ruling	Interest @ 3% from Redundancy to date of Charles J. Ruling	Interest at 6.25% from Charles J. ruling to Assessment ruling	Total of damages plus percentages	
Kayla Ward	\$442,362.88	30 <sup>th</sup> Nov 2017	17 <sup>th</sup> Feb 2020	\$29,421.8	\$121,999.00	\$593,783.68	

Dwaynel Archer	<b>\$136,360.73</b>	11 <sup>th</sup> Dec 2017	17 <sup>th</sup> Feb 2020	\$9469.00	\$39,205.80	\$185,035.53	
Georgette Johnson	<b>\$452,619.62</b>	27 <sup>th</sup> Nov 2017	17 <sup>th</sup> Feb 2020	\$29,194.85	\$130,129.40	\$611,943.87	
Latoya Knowles	<b>\$193,733.34</b>	16 <sup>th</sup> Feb 2018	17 <sup>th</sup> Feb 2020	\$11,624.00	\$55,698.00	\$261,055.34	
Hope Miller	<b>\$179,708.48</b>	27 <sup>th</sup> Nov 2017	17 <sup>th</sup> Feb 2020	\$11,536.74	\$51,667.2	\$242,912.42	
<b>Grand Total</b>						<b>\$1,894,730.61</b>	

### Costs

76. Costs in this matter will be costs fit for two Counsel, to be awarded to the five Claimants, to be taxed, if not agreed.

Edmund Turner  
Deputy Registrar  
6<sup>th</sup> June 2024